

EXHIBIT A

STATE OF NEW YORK
COUNTY OF NEW YORK: SURROGATE'S COURT

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IN THE MATTER(S) OF:

ESTATE OF TAMIR SAPIR, FILE NO.:
2014-4683/A

Decedent.

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Virtual Proceedings
31 Chambers Street
New York, New York 10007
June 07,2022

BEFORE: HONORABLE RITA MELLA

APPEARANCES: ANDREW J. URGENSON, ESQ.
Appearing for Alex Sapir,
Preliminary Executor of the Estate
Of Tamir Sapir

SHERON KORPUS, ESQ.,
DONALD KNOVICK, ESQ.,
APPEARING for Rotem Rosen,
Claimant.

CHARLES SCOTT, ESQ.
Appearing for Elena Sapir.

BRIAN CORRIGAN, ESQ.
Appearing for Alex Sapir, Ruth Sapir
Berenstien, (ph.) and Zena Sapir.

WILLIAM TURKISH, ESQ.
Appearing for Rosita Sophia and Alan Cohen

BONNIE CHMIL, ESQ.
Appearing for Elena Saphir

"OFFICIAL TRANSCRIPT"

Digital Recorded Proceeding, Rosie M. Zayas, Transcriber

1 (3:04:31)

2 COURT OFFICER: Good afternoon.

3 MR. URGENSON: Good afternoon.

4 MR. KORPUS: Good afternoon.

5 COURT OFFICER: This is Surrogate Rita Mella,
6 miscellaneous calendar for Tuesday, June 7 of 2022. At
7 this time, we're calling application twelve in the Estate
8 of Tamir Sapir, last name S-A-P-I-R, and the file number is
9 2014-4683 sub record A as an apple.

10 THE COURT: Good afternoon, everyone.

11 MR. KORPUS: Good afternoon Judge.

12 MR. URGENSON: Good afternoon Your Honor.

13 THE COURT: And yes, we are conducting these
14 proceedings through virtual means. This is our new
15 reality, post pandemic. I am in the courthouse as you can
16 see but you are all appearing virtually and thank you for
17 doing that, for being willing to appear virtually.

18 So, may I have your appearances please.

19 MR. URGENSON: Thank you Your Honor. Good
20 afternoon, this is Andrew Urgenson, from Oved & Oved LLP,
21 counsel for the estate.

22 MR. OVIED: Good afternoon Your Honor, this is
23 Terence Ovid, representing the estate as well.

24 MR. KORPUS: Good afternoon Your Honor, Sheron
25 Korpus, representing the claimant.

1 MR. NOVICK: Good morning - good afternoon Your
2 Honor, Donald Novick, also representing Rotem Rosen, the
3 claimant.

4 MR. SCOTT: Good afternoon Your Honor, Charles
5 Scott representing Elena Saphir as guardian of the property
6 of the descendants, infant son, Elie Sapir.

7 MR. CORRIGAN: Good afternoon Your Honor, Brian
8 Corrigan, Farrell Fritz, representing Alex Sapir, Ruth
9 Sapir Berenstien (ph.) and Zena Sapir, all in their
10 individual capacities.

11 THE COURT: Mr. Corrigan, are you also
12 representing the former infant Zitta (ph.)?

13 MR. CORRIGAN: I am not, Your Honor.

14 THE COURT: No, okay.

15 MS. CHMIL: (Inaudible)

16 THE COURT: I'm sorry -(inaudible) we cannot hear
17 you.

18 MS. CHMIL: Oh, one moment.

19 MR. URGENSON: While we wait for Sheron Korpus to
20 get in I also have with me Gavin Schryver and (inaudible)
21 Braun (ph.).

22 MR. TURKISH: Your Honor, William Turkish,
23 Braunstein Turkish for Rosita Sophia and Alan Cohen.

24 MALE SPEAKER: Your Honor is this message for
25 him?

1 THE COURT: No.

2 MS. CHMIL: Can you hear me now?

3 THE COURT: Yes, we can hear you and we can see
4 you.

5 MS. CHMIL: Thank you. They changed my
6 settings, I apologize. Bonnie Chmil, for Catten, LLP on
7 behalf of Elena Saphir, individually.

8 THE COURT: So, it's Chmil?

9 MS. CHMIL: Ok okay I'm so glad that you told me
10 that.

11 MS. CHMIL: Thank you Your Honor.

12 THE COURT: Okay. So, before the court is a
13 motion for summary judgment in the preliminary executors
14 proceeding to this (inaudible) claim. I had granted a
15 continuance of this motion from the bench on December
16 eleventh, twenty twenty, then also by written decision
17 dated March nine, twenty twenty-one. And the continuance
18 was granted pursuant to CPLR 3211 subdivision f, as in
19 Frank.

20 The parties then engaged in discovery as allowed by me
21 and have now filed supplemental papers in support of their
22 respective positions. Of course, the last papers received
23 were reply papers by the (inaudible) the preliminary
24 executor.

25 So, I'm asking you Mr. Korpus, and I have of course

1 read your papers and I'm familiar with your argument. I'm
2 asking if there is anything that you would like to address
3 on the record today concerning the arguments made by
4 (inaudible) in the reply papers.

5 MR. KORPUS: Thank you Your Honor. Your Honor in
6 brief the supplemental briefing on the exenterate the fact
7 heartly disputed here, and a summary judgement is improper.
8 And I think that it is particularly glaring in the papers
9 submitted by the estate where they put in declarations by
10 the estate's accountant Mr. Kahan and the estates attorney
11 Mr. Wechsler, trying to dispute emails on the record and
12 trying to dispute previous statements made clearly by Mr.
13 Kahan and Mr. Wechsler in emails.

14 I don't know how the court can resolve those kinds of
15 issues on the papers. But more fundamentally, the estate
16 seems to have lost the focus of the supplemental briefing.
17 The court continued the motion to allow Mr. Rosen to
18 discover facts to justify his defenses on the statute of
19 frauds and on vagueness indefinites of the agreement.

20 And in a subsequent conference Mr. Wechsler after
21 checking with Your Honor confirmed that the purpose of the
22 statue of fraud discovery was so the court could see
23 whether the estate satisfied its burden, that there was no
24 disputed fact and that all the work done by ASRR was the
25 intermediary type work that's excluded as opposed to work

1 that's not excluded under the appellate division decision
2 in Dulfman.

3 And if you look at the papers that's exactly what we
4 did. We showed you out for years day in, day out, ASRR
5 engaged in the of managing these assets and did much more
6 than just acting as (inaudible) or broker.

7 Just like the (inaudible) in the pre Dolfmen (ph.)
8 cases, unlike the cases, the pre Dulfman cases, that they
9 rely on with just a short intermediary role.

10 In fact, with ASRR, it was carried out the duties of
11 the principle in managing these properties for years.
12 That's why we have numerous press releases and a
13 prospective specifically recognizing the role play by ASRR.

14 And the estate ignores all that and make arguments in
15 the reply that they made before when we appeared before you
16 eighteen months ago.

17 For example, they argued that if some of the work is
18 covered by the statute of fraud, the entire claim failed.
19 They presented at court to you the last hearing, and if the
20 court had accepted it, summary judgment would have been
21 ordered at that time. But it wasn't because that's not the
22 law. And Dulfman and the other cases on the brief make
23 that clear. And only definiteness the record actually
24 became much more favorable for the claimant.

25 Because first, the estate now admitted in response to

1 request for admission number ten, that ASRR was paid for
2 the HSBC work through the Russian judgment proceeds. So,
3 the estate has now admitted it on two prior occasions. The
4 parties were able to calculate the amount owed to ASRR.
5 The twenty ten restricting and the HSBC restructuring. And
6 from the document, we were able to calculate almost to the
7 exact amount to the seventy-five million dollars that was
8 paid to ASRR and the (inaudible). And the estate only
9 response is to submit an affidavit from the accountant,
10 Alan Kahan, trying to recant his previous email and the
11 recital in the security agreement that recalculated that
12 amount. I mean that is as far from summary judgment as you
13 can get.

14 And finally, I'm not going to get into it, into the
15 details here unless you want me to. But in a belated
16 motion for reconsideration the estate rehashes the same
17 arguments on the release that the court rejected before.

18 Now, there was no discovery and the release you didn't
19 order discovery on the release, and if the court was
20 inclined to accept that a release to breach the estate to
21 Mr. Tamir (inaudible) parties, could release this claim the
22 court could have resolved it again eighteen months ago and
23 you didn't. Because you send us to get discovery on the
24 two issues, statute of fraud and indefiniteness.

25 If anything, what we learned from all this discovery,

1 if the claimant has a strong case and what is the court
2 issue here. And that issue is whether or not Alex on
3 behalf of Tamil on multiple occasions promised, that ASRR
4 would be compensated for the work in 2014 and 2015 in the
5 same manner that it had been compensated before and is
6 reflected in the 2011 letter. That's what this case is
7 about. Whether there was an agreement or whether ASRR had
8 a reasonable expectation of being so compensated.

9 And as I said, you raised a question at the last
10 hearing, that how you people make an oral agreement
11 involving such large sum of money. We now know from this
12 request for admission, that they did it once before. They
13 did it in connection with the HSBC loan restructuring. The
14 estate admits that sixteen million dollars was paid to ASRR
15 as under an oral agreement that came after the date of the
16 letter agreement. There were all family members at that
17 time. That's the way they operated. There is a cause of
18 conduct here. And that way in the email from Mr. Wechsler,
19 which references quote 'the monies owed to ASRR by your
20 father". Not the monies paid, the monies owed.

21 And Mr. Wechsler submitted an affidavit trying to
22 explain another way too. Saying no, I was talking about
23 the money under the original agreement, but again, that's
24 something that needs to be explored in the depositions and
25 ultimately at trial.

1 Thank you Your Honor. I have more arguments to make
2 on each one of these but I thought I just give you a recap
3 and I happy to answer any questions.

4 THE COURT: Thank you. I just want to say that
5 nothing should be referred from my decision to allow
6 discovery as only two of the grounds upon which (inaudible)
7 relied in the summary judgment motion. I did not make a
8 decision as to any of the arguments made by (inaudible). I
9 have not ruled on the motion, I have not made a partial
10 ruling on the motion. There's no ruling at all. So,
11 nothing should be inferred from that. Just want to clarify
12 that.

13 MR. KORPUS: Your Honor I appreciate the
14 clarification. If you'd like me to address the arguments
15 in detail on the release I can. They are the same
16 arguments that we argued last time but I'm happy to go
17 through them.

18 THE COURT: Yeah, no, it's okay. As I said, I'm
19 familiar with your papers.

20 MR. KORPUS: Thank you Your Honor.

21 THE COURT: So, Mr., I'm assuming I guess because
22 last time it was Mr. Urgenson who spoke. I'm assuming he
23 would be addressing the questions of, my questions today,
24 is that true?

25 MR. URGENSON: That is correct Your Honor, thank

1 you. This is Mr. Urgenson.

2 THE COURT: Okay. So, Mr. Korpus mentioned that
3 you are submitting two affidavits, one by Mr. Wexler and
4 one by Mr. Kahan that seem to be making factual statements.
5 And so (inaudible) you know you cannot really resolve these
6 issues in summary judgement. These are factual issues, he
7 said. And could you please address that Mr. Urgenson?

8 MR. URGENSON: Yes, sure Your Honor. Just, the
9 first point and I have many on this topic is that Claimants
10 had the opportunity to take both of their depositions but
11 they specifically elected to waive depositions and I think
12 that was a telling decision. Because they really didn't
13 want to know the answers. They rather come into court and
14 say we need more discovery.

15 Because the bottom line is, these are undisputed
16 statements, that Mr., (inaudible) bring out summary
17 judgments to bring forth evidence in an admissible form. I
18 did so by way of these affidavits. And Mr. Korpus has no
19 way of disputing these affidavits. He could have tried to
20 by taking a deposition but again he waived it.

21 So, the fact that he's saying that we need more
22 depositions, is not an acceptable argument because he's
23 bared from taking those depositions based on his own
24 client's decision.

25 But the more important issue Your Honor is neither of

1 those affidavits really matter for the purpose of this
2 motion.

3 First of all, if Mr. Wechsler, an attorney who is new
4 to the case simply referenced that there was a debt.
5 That's all he said. Okay. That's all he said, he didn't
6 say for what it was for, he didn't say anything like that.
7 And he clarified that at the time he wrote that. He was
8 referring to the amount that already paid on the security
9 agreement he just didn't know what had been paid.

10 Mr. Korpus has no book, no recent to dispute that. I
11 mean it's -- there's nothing in the record to dispute that.
12 But more importantly Your Honor, he not only explained
13 that, he explained that he was (inaudible), he was, had
14 numerous discussions with Rotem and Alex and nobody ever
15 raised this additional claim and it never made it into any
16 of the tax filings.

17 So, he was preparing these documents for the purposes
18 of doing the state tax return. He had nothing else besides
19 the security made it in. So that indefinitely proves Mr.
20 Wechsler's affidavit.

21 But the point is, the main point is, it doesn't matter
22 for this motion at all. Because based on the case law,
23 that we briefed, such a statement just vaguely referring to
24 a debt, is not enough to satisfy the statute of frauds.

25 A, because it wasn't written by Alex and he's the

1 person who allegedly charged with these oral statements.

2 And b, it doesn't mention any work and c, it doesn't
3 mention any terms of an alleged agreement.

4 So, even if Mr., even if the Court was somehow just
5 believed Mr. Wechsler's undisputed affidavit, it doesn't
6 matter because it's still not enough to satisfy the statute
7 of frauds.

8 By the same token, Mr., they had the opportunity to
9 take Mr. Kahan's deposition. Unlike them, I had since
10 spoke to Mr. Kahan, he said that he did not calculate these
11 amounts and he has no idea how they were calculated. And
12 frankly he was frankly surprised to see that email.

13 But the point here is that, we demonstrated separate
14 and apart from Kahan's affidavit, that there is no
15 mathematical possible way to take two percent of the asset
16 sold as a result of two thousand ten restructuring and get
17 to seven five million dollars. It's not even close, not
18 even close.

19 So, regardless if whether or not the court believes
20 Mr. Kahn or doesn't believe Mr. Kahn, we've showed that
21 there is literally no possible way to use a fixed ten
22 percent formula to get to the seventy-five million dollars.
23 The same thing with the HSBC debt.

24 But I also want to raise one that was very misleading
25 about what Mr. Korpus just said. Mr. Korpus said that in

1 the HSBC work, there was no writing about the estate
2 compensating ASRR for the work and the HSBC work. And that
3 that was evidence that they didn't need to have a writing.
4 He's completely ignored, completely ignoring the third page
5 of the letter agreement. The third page in the letter
6 agreement, after it talks about the restructuring work Your
7 Honor, it specifically says, on a personal level we have
8 managed to sell your plane, 384 Fifth Avenue and the Duke
9 Mansion on 82nd Street for the record price in the bottom of
10 the market to Mr. Pirellis Ling (ph.)

11 Even your lender HSBC was amazed by the magnitude of
12 the transactions for which we weren't paid the also and
13 expect (inaudible) commitment to have paid us in the near
14 future.

15 Those three transactions are what they admit. In
16 their interrogatories were the three transactions they
17 engaged in in order to discharge the HSBC work.

18 And then he follows and says, unfortunately
19 investments in the Japanese and together with the existing
20 loan on the Russia house and the boat puts you today in a
21 balance due to HSBC of about sixty million dollars for
22 which you were in default and had to spend a lot of legal
23 fees.

24 So, Your Honor, there was a writing. This was signed
25 by Tamir. It says, we expect to be paid for the HSBC work

1 and he described what that work was. Ultimately they were
2 paid for the HSBC work.

3 So, the notion that they didn't have to have a writing
4 is completely belied by the letter, by the way the that
5 Wilton Rosen drafted.

6 And Your Honor, every time ASRR received compensation,
7 it was done by a writing. When they managed 260-261
8 Madison, there was a written management agreement.

9 So, Your Honor, I have many arguments here. I'd like
10 to, in response to your question was there anything in
11 response to the reply, Mr. Korpus basically gave his entire
12 argument. I don't want to do the same unless you want me
13 to. But I'm happy to go into more detail. But I think
14 I've answered your question.

15 THE COURT: All right, as I said, I am familiar
16 with your arguments. And I don't want you to repeat what
17 is already on the papers.

18 MR. URGENSON: Okay.

19 MR. KORPUS: Your Honor if I may respond to Mr.
20 Urgenson?

21 THE COURT: Sure -

22 MR. KORPUS: On the --

23 THE COURT: -- but briefly Mr. Korpus please.

24 MR. KORPUS: -- it will be very brief. On the
25 question of depositions, these are the sequence. We have

1 noticed the deposition of Mr. Sapir, they have notice of
2 the deposition of Mr. Rosen. Mr. Urgenson approached us
3 and said, we have the burden of the motion, we don't think
4 we need depositions why don't we just agree there's no
5 depositions for the purpose of the motion. I agreed with
6 him. The burden is on him.

7 At that time, there were no affidavits, the motion had
8 not been briefed yet. I had not seen the affidavits and I
9 agree, and I agree today that the burden is on him on
10 summary judgment and it cannot satisfy that burden by
11 submitting affidavits about heartily contested as to whether
12 or not what Mr. Wechsler refers to an existing debt or a
13 past debt.

14 And with regard to Mr. Kahan, Mr. Kahan, there is an
15 email on the record from Mr. Kahan, where he clearly said,
16 that he calculated the record. He calculated the amount
17 of, the amount due. It's on (inaudible) fourteen. Alex
18 emailed Kahan a copy of the log agreement asking to
19 quantify the receivable. Kahan writes back, and says, the
20 amount due as per the agreement is calculated based on the
21 sale of assets used to restructure the above.

22 And we calculated it ourselves. It's in our papers.
23 He says its mathematically impossible, we came within point
24 one four percent based on public records, based on an email
25 from Alex to Jane (inaudible) the family's lawyer. Based

1 on admissions made by the estate. We got to that same
2 number. So, it's not mathematically impossible, in fact it
3 was very easy for us to do.

4 And finally on the fact that HSBC was reference in the
5 letter agreement, that's not the point. The point is that
6 there has been a moving target on that. Last time when
7 they were before you, they argued that it was totally
8 fabricated that ASRR was paid through the -- it's in your
9 papers, I'll give you the cite Your Honor.

10 Your Honor if you look at the initial, the estate
11 memorandum at page twenty-nine, it describes oral
12 engagement through the claimant estate through the Russian
13 judgment for the HSBC work as quote, "totally false and
14 contrived" that's on page twenty-nine of the initial brief.

15 Now that we showed them that we did, they come in and
16 say no, no, no, no, no. It was paid through the Russian
17 judgment. But that only strengthen our case.

18 The fact that there was a cause of conduct here where
19 on two occasions ASRR was paid for the work. And now we
20 have public documents that recognizes ASRR continued to do
21 the work, numerous press releases. You have an offer
22 memorandum that was on my (inaudible) Bank. All recognize
23 that it was ASRR who did all the work managing these
24 buildings.

25 That's what we relying on Your Honor. Thank you.

1 MR. URGENSON: Your Honor may I briefly respond,
2 if I may?

3 THE COURT: Okay, very shortly, very briefly.

4 MR. URGENSON: So, I believe Mr. Korpus has
5 mischaracterizing our argument. I think that we were
6 saying that it was, the idea that there was eight hundred
7 -- a hundred and eighty million dollars in debt to HSBC and
8 they got paid eight million it was fully contrived.

9 But regardless, I mean, you know you can read the
10 papers and you can obviously make those determinations for
11 yourself. But one thing I also wanted to clarify was, that
12 two things, despite what they told you Your Honor, about
13 not having the emails, they had the Alan Kahan email and
14 they had the Wechsler since the beginning of this action.

15 Never did they ever even serve a notice of subpoena to
16 Mr. Wechsler, ever. Despite always having this email. And
17 also, Mr. Korpus, misrepresented the facts a little bit.

18 What I said was, it wasn't important to have Alex and
19 Rosen be deposed because they have already put forth their
20 affidavits and Mr. Korpus came back to me and he said we'll
21 agree provided that we also don't take Mr. Kahan's
22 deposition.

23 So, we specifically boxed out Mr. Kahan. And you know
24 despite having that email all along as well, he
25 specifically wanted to avoid the deposition of Mr. Kahan

1 and we agreed to that. So, those are the facts.

2 MR. KORPUS: We didn't know at that time of affidavit
3 and Your Honor you have exhibit here, which is the exchange
4 of Mr. Urgenson, you can see what he says, it simply not
5 correct. And let me address the emails really quick
6 because you're going to go there anyways.

7 Your Honor it makes no sense that we have these emails
8 know them and hide them. If we had known about them, if we
9 had known we had the emails, we would have used them. Just
10 as well we used them because the estate never produced
11 them. Did not produced the Wechsler email, did not produce
12 the Kahan email, thank God we had them.

13 You know it was a mistake, we had no idea, we finally
14 saw a laptop, it was on that, in a very heavy (inaudible),
15 and not only that, we didn't even withhold any privileged
16 document.

17 Unlike the estate which withheld three thousand
18 privileged documents even though Mr. Rosen has owned them.
19 We produced everything, privileged, not privileged, we gave
20 the estate our entire collection.

21 THE COURT: Okay. Mr. Scott, anything that you
22 would like to add?

23 MR. SCOTT: Imputed chart - Your Honor on the
24 issues that have been discussed, or addressed by Mr. Korpus
25 and Mr. Urgenson, the answer is no. But we take a more

1 simplistic view of the issue on this motion, Your Honor.
2 It's fully briefed in our papers. I prepared a summation
3 of that position. And I'm happy to present it Your Honor.
4 But if Your Honor is fully familiar with the papers, I will
5 spare you.

6 Fundamentally, what our position comes down to is that
7 we support the motion and we believe that it should be
8 granted on one or two grounds or on both grounds.

9 One, is for what Mr. Rosen has said and the second is
10 for what he has not said. Your Honor need only referred to
11 Mr. Rosen's amended answer dated July eight, two thousand
12 nineteen and his supplemental affidavit dated February
13 seventeenth, two thousand twenty, where he lays out in
14 seriatim fashion, the services rendered by ASRR as a basis
15 for compensation, and compare those services in bullet
16 point fashion with the service, the types of services
17 enumerated in the general obligation's laws, you know
18 5-701a10 and you will find that they are mere image.

19 You know if the general obligation law requires a
20 writing for compensation to negotiate a loan, ASRR
21 negotiated multiple loans in regard to the three properties
22 that are a subject of their services. Fifty-three Park,
23 Fifty Madison and all that, Fifty (inaudible) eleven
24 Madison.

25 If the general obligation and law requires a writing

1 as a basis for compensation to negotiate a purchase, ASRR
2 negotiated multiple purchases with a respect to each of the
3 properties. If then the general obligation law requires a
4 writing to negotiate a sale or exchange, ASRR negotiated
5 multiple exchanges with a respect or sales with respect to
6 each of these properties. The same is true with renting or
7 leasing or precuring the introduction of a party, or
8 negotiating or the consummation of a transaction.

9 Mr. Rosen's answer and his supplemental affidavit
10 recites chapter and verse the very types of services and
11 claims credit for the varies types of services which the
12 general obligations law or the statute of frauds as we
13 refer to it you know require that there be some form of
14 writing as a predicate to -- entitled to compensation.

15 To be sure Mr. Rosen has tried to walk back those
16 representation or his rendition of the services which he
17 claims ASRR performed, and is seeking compensation, but
18 Your Honor, his representation in those two pleadings are
19 unequivocal, unambiguous and are made under oath and under
20 the court of appeals Holding and (inaudible)
21 (telephone ringing) Bunsmond (ph.) it is our position that
22 he has bound by them. And if he is bound by them the
23 emotion should be granted because the services are simply
24 not compensable in the absence of some form of writing.

25 And my second point that the motion should be granted

1 for what Mr. Rosen doesn't say, or in this case does do. I
2 raise this issue when we were before Your Honor last in
3 December I believe of two thousand twenty.

4 I find it incredulous, that this you know closely held
5 two-person entity, ASRR, has no record whatsoever of the
6 existence of this one-hundred- and two-million-dollar
7 receivable. You would think that any entity that was owed
8 a hundred and two million dollars would be carrying that
9 receivable somewhere in its books and records. Some
10 notation of an account receivable, some mention on a
11 quarterly or annual report in a profit or loss statement on
12 a balance sheet or a statement of assets. Not anything
13 anywhere, if only to show that the company you know
14 acknowledged or was aware that it was owed this money.

15 To ensure that we had not overlooked something we
16 served Mr. Rosen with a notice to admit. And in response
17 Mr. Rosen confirmed that that the receivable had never been
18 reported on the books or records of ASRR and that the
19 receivable has never been listed on any financial net worth
20 statements, statement of profit of loss, statement of
21 assets, liabilities or any other document showing ASRR as
22 financial condition.

23 You know we find it patiently incredible Your Honor
24 for Mr. Rosen to assert that ASRR has a claim of a hundred-
25 and two-million dollars against the decedent or the

1 decedent's estate and that ASRR never reported the
2 existence of such account receivable on any financial
3 statement.

4 We also Your Honor find it patiently inconceivable
5 that when Alex Sapir and Mr. Rosen affected a severance of
6 their interest in ASRR, that the alleged claim was never
7 mentioned.

8 Your Honor may recall that Alex Sapir paid
9 seventy-five million dollars to Mr. Rosen to buy out his
10 interest in ASRR and other joint interests with one single
11 exception as I mentioned the last time, of an insurance
12 policy which was specifically referenced in the closing
13 documents as an asset that will be dealt with separately.

14 Yet there's no mention of this one hundred and two-
15 million-dollar receivable which merely equals the record
16 value of the company and the joint interests.

17 When I raised you know this observation before Your
18 Honor, Mr. Korpus as I recall corrected me to say that the
19 separation of interests between Mr. Sapir and Mr. Rosen was
20 not intended to include all of ASRR assets.

21 However, Mr. Korpus filed a document dated December
22 twenty-six, twenty-twenty one, in a federal court action,
23 between Mr. Rosen and Mr. Alex Sapir, titled, Statement of
24 Material Facts as to which there is no actual dispute.

25 There Mr. Korpus stated that pursuant to a binding

1 LOI, letter of intent, Sapir, meaning Alex agreed to
2 purchased Mr. Rosen's entire interest in their joined
3 assets including ASRR for seventy million-dollars which was
4 then increased by approximately five and a half million
5 dollars.

6 So, I close the question again of the separation of
7 interest involved Alex purchasing the hold of Mr. Rosen's
8 interest in ASRR, why there is no mention of that asset in
9 the closing bind or any document associated you know with
10 that transaction as an account receivable.

11 Your Honor, I only mention this because we're all
12 familiar with the road map for briefing a summary judgment
13 motion. You know once the (inaudible) has made a prima
14 facia showing of entitlement to judgment as a matter of
15 law, the burden shifts to the respondent to produce
16 evidence with proof in admissible forms sufficient to
17 establish the existence of a triable issue of fact and I
18 would submit that Mr. Rosen has failed to meet that burden
19 by not providing a single document or notation. You know
20 just a scribble for that matter to demonstrate this alleged
21 claim ever existed or that he believed the claim existed.

22 You know, instead you know what we have in the main
23 for Mr. Rosen are his self-serving narrative which falls I
24 believe far short of the quantum proof required to create a
25 triable issue of fact.

1 And that is you know in an abridged version of what my
2 comments would have been today Your Honor and I thank you
3 for your time.

4 MR. KORPUS: If I may (inaudible) --

5 THE COURT: Thank you.

6 MR. KORPUS: -- Your Honor.

7 THE COURT: Thank you Mr. Scott.

8 MR. KORPUS: Sorry Your Honor?

9 THE COURT: No, I just said, thank you Mr. Scott.
10 Mr. Korpus you want to respond?

11 MR. KORPUS: Yes please. Your Honor, Mr. Scott's
12 presentation on the statute of fraud and the work done, we
13 have made a detail, detailed and undisputed showing of all
14 the work that was done and how it satisfies the
15 requirements of Dorfman (ph.) and is in accordance with
16 cases Jeff Capital Advisors and Kopley (ph.) vs. Plan (ph.)
17 in showing that it goes beyond just negotiations. Mr.
18 Scott in his papers and here today has this view of the
19 statute of fraud that if he touches negotiation its
20 enforceable then he's not no longer, that is not the law in
21 those cases.

22 The law is in Dorfman the court said that just because
23 work is intertwined with work assisting in negotiations
24 consummation of a business opportunity, it is not
25 unrecoverable.

1 And in Kopely (ph.) verses Plan (ph.) the recent case,
2 the court held the statute of fraud did not apply where
3 client provided financial and investment advised that
4 extended over years. Which is exactly what happened here.

5 And all the work that we've shown, in arboreous detail
6 reviewing and commenting on transaction documents, meeting
7 with attorneys, meeting with counter parties, working on
8 financing, advising, strategizing on how to manage
9 investments, all of that work, attracting tenants, I mean,
10 there's a litany and I can take you through all but I know
11 you know the papers. That just comes as exception to
12 Dorfman, (ph.) because all the work was done.

13 Now how do we know that work was done? First of all,
14 it's all in the emails, it's all in the fifteen thousand
15 emails sent by Rotem (ph.) alone, but also it was
16 recognized in press releases on all these big transactions.
17 Recognizing the role of ASRR in managing this property. It
18 was recognized in the prospectors filed with the SCC, which
19 reference the work done by ASRR.

20 So, it's not that there is no writing, there is
21 writing. There's even writing, there's even writing with
22 the SCC. And there is the affidavit by Mr. Wechsler, which
23 I know they dispute.

24 Now let me address the second point which is, why
25 wasn't this in any of the accounts of ASRR, this debt.

1 Because it was a family business, it was Alex and Rotem
2 they were brother in laws at that time and it was the same
3 with the HSBC debt. That was also never recorded on ASRR
4 receivable on any of the accounts of ASRR.

5 And we know today that the estate acknowledges the
6 debt was a debt that was owed and eventually paid to ASRR
7 for the work done in connection with HSBC. But it's just
8 the same cause of conduct Your Honor.

9 And finally, Your Honor, in connection with the letter
10 agreement between Alex and Rotem, first of all as argued
11 before its in our papers that had nothing to do with the
12 estate, that was division of joint assets. Not of ASRR of
13 joint assets. That's what they were there to do.

14 There's no mention of the hundred- and two-million-
15 dollar debt it because it not a debt, it was owed from Alex
16 to Rotem or Rotem to Alex. It was nothing to do with that.

17 Now, what he does tell you is that their argument that
18 the release (inaudible) in connection with this joint
19 letter, released the estate cannot be. Because Mr. Scott
20 argument runs totally contradicted to the estate argument
21 here.

22 Mr. Scott says, it had nothing to do with the hundred
23 and two million dollars, it wasn't even mentioned, then why
24 would it be released. If Mr. Scott didn't know about it as
25 counsel of the beneficiaries, then he couldn't have

1 released it. Therefore, the release could the release
2 could not have operated to release that debt. Thank you
3 Your Honor.

4 THE COURT: Thank you. Okay, I'm assuming no one
5 else is intending to speak today other than those who have
6 spoken. Okay, give me a few minutes. We can go off the
7 record.

8 OFF THE RECORD (3:40:53)

9 BACK ON THE RECORD: 3:50:43

10 THE COURT: I am going to rule on the Motion
11 today. The Motion for Summary Judgment in these SCPA-1809
12 proceeding to this amount, the claim asserted on behalf
13 ASRR LLC, against the Estate of Tamir Sapir is granted and
14 the claim is disallowed.

15 The preliminary Executor established a prima facia
16 case of entitlement to judgment as a matter of law with
17 respect to his position that any claim by ASRR is bared by
18 the statute of frauds.

19 In this regard, (inaudible) established that the
20 alleged agreement, pursuant to which claimant seeks
21 compensation involves over all the (inaudible) or lease of
22 real estate and negotiations related to the same.

23 For which general obligations law section 5-701 sub-a,
24 subdivision 10, requires a writing in order to be
25 enforceable.

1 I opposition to the Motion, claimants evidence failed
2 short of creating an issue of material fact requiring a
3 trial.

4 I will issue a decision of course which will be sent
5 to all of you. Thank you very much.

6 MR. URGENSON: Thank you Your Honor.

7 MR. KORPUS: Your Honor, may I ask a
8 clarify question?

9 THE COURT: Of course.

10 MALE SPEAKER: Thank you Your Honor.

11 THE COURT: Of course.

12 MR. KORPUS: Your Honor I understand your ruling,
13 I remind the Court we also have (inaudible) contractual
14 claims, I wasn't sure whether your ruling on those as well.
15 We have unjust enrichment and one to merit and those
16 claims. I wasn't sure --

17 THE COURT: No, yeah --

18 MR. KORPUS: -- whether the --

19 THE COURT: -- I will address those in the
20 written decision.

21 MR. KORPUS: Thank you Your Honor.

22 MR. URGENSON: Thank you so much Your Honor.

23 THE COURT: Okay thank you.

24 MALE SPEAKER: Thank you.

25 THE COURT: Have a good day.

1 (3:52:55 p.m.) [PROCEEDING CONCLUDED]

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4 CERTIFICATE: I, Rosie M. Zayas, certify the foregoing
5 transcript of proceedings held at New York County Surrogate's
6 Court, NYS, Estate of Tamir Sapir, File #2014-4683/A, was
7 prepared using the required electronic equipment and is a true
8 and accurate record of the proceedings.

9 Signature: Rosie M. Zayas Date: June 11, 2022

10 Electronic signature

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